In the Matter of	
	DATE ISSUED: August 15, 1996
MANSOUR GUITY,	
Complainant,	CASE No.: 90-ERA-10
v.	
TENNESSEE VALLEY AUTHORITY,	
Respondent.	

RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AND DISMISSING COMPLAINT

The parties have submitted to me a Memorandum of Understanding and Agreement together with a Joint Motion for Dismissal and a draft Recommended Order of Dismissal (annexed hereto and incorporated by reference herein.) The Memorandum of Understanding and Agreement would result in the settlement of the instant case; Case No. 95-ERA-34, a case involving the same parties which is also pending before the undersigned administrative law judge; and a complaint docketed in the United States District Court for the Eastern District of Tennessee as Civil Action No. 3-87-843, relating to the enforcement of an August 15, 1986 settlement agreement pertaining to a prior case involving the same parties before the Office of Administrative Law Judges, Case No. 86-ERA-16. Although I agree that the instant case should be dismissed, I have also considered the merits of the underlying settlement and recommend that the settlement be approved as resolving both Case No. 95-ERA-34 and the instant case.

The parties have requested that I recommend to the Secretary (acting through the Administrative Review Board) that this case be dismissed. However, a stipulated dismissal many not be applicable to the instant case in view of the settlement of the case by the parties, even though the settlement provides that it will take effect in District Court even if it is not approved by the Labor Department. ***Compare Gergans v. Edward Hines, Jr., Hospital,*** 94-ERA-26 (Sec'y Dec. 7, 1994) (disposition of complaints under Rule 41 can only be effected by final order of the Secretary) ***with Hoffman v. Fuel Economy Contracting,*** 87-ERA-33 (Sec'y Aug. 4, 1989) (finding unconditional right to dismissal by stipulation under Rule 41 inapplicable to ERA proceedings when a settlement is involved, based upon 42 U.S.C. § 5851(b)(2)(A)). Recent authority by the Administrative Review Board has made clear that before a matter may be dismissed, an ALJ must determine whether the dollar amount received by the Complainant

is fair, adequate and reasonable. ***See Klock v. Tennessee Valley Authority,*** 95-ERA-20 (ARB May 30, 1996).

This case has a lengthy and convoluted procedural history, which need not be fully recounted here. By Decision and Order of January 24, 1994, the Secretary of Labor dismissed the Complainant's complaint without prejudice and gave the Complainant a period of one year to file a motion to reopen, provided certain criteria related to the Complainant's psychological competence to litigate the case were satisfied. A motion to reopen was filed and by Remand Order of May 3, 1995, the Secretary remanded this case to the Deputy Chief Administrative Law Judge for further proceedings, including a hearing and a recommended decision on the merits, and directed that the scheduling of the case be handled in the same manner as any other ERA case.

The case was then assigned to the undersigned administrative law judge, and a Notice and Prehearing Order was issued on May 25, 1995, to which the parties jointly responded. Thereafter, the case was noticed for hearing commencing on November 15, 1995, to continue until completed. On August 17, 1995, the Respondent filed a Motion for Summary Judgment, and the Complainant moved to continue the hearing so that additional discovery could be conducted and also sought additional time to respond to the Respondent's Motion. A conference call was held on September 27, 1995, the hearing was continued, the Complainant was granted additional time to respond to Respondent's Motion, and the parties were advised to propose a scheduling order. The parties were unable to reach an agreement on scheduling due to the federal case set to begin on January 18, 1996. Another telephone conference was held on February 28, 1996, following which a scheduling order was issued, which required the Complainant to respond to the Respondent's motion by May 1, 1996 and which advised that the trial would be held some time in July.

In a conference call of April 25, 1996, the parties provided the undersigned administrative law judge with a status report concerning the pending litigation between the Complainant and the Respondent and asked for a stay of proceedings so that settlement negotiations in the instant case could be completed. The parties indicated that the district court trial had been conducted. Because of an apparent overlap, I asked the parties to confer and advise what issues are currently pending before me and what issues were before the district court. I requested that the parties try to work out all pending issues in both cases before me (Case No. 95-ERA-34 and the instant case),[1] but that if they were unable to do so, they should define the issues prior to

[1] The parties have opposed consolidation of the two matters.

trial. I commend the parties for having amicably resolved the pending issues in all three matters.

I have considered the Memorandum of Understanding and Agreement (which is annexed hereto and incorporated by reference herein) and I find that it constitutes a fair, adequate, and reasonable disposition of the pending case (as well as the other pending matters) in accordance with the employee protection provisions of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. § 5851. I have also signed the Recommended Order of Dismissal (also annexed hereto and incorporated by reference herein) but due to the authorities cited above, I am also issuing this recommended decision and order. Accordingly,

IT IS HEREBY RECOMMENDED that the Secretary of Labor, through the Administrative Review Board, approve the Memorandum of Understanding and Agreement and issue an Order dismissing this case with prejudice.

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PAMELA LAKES WOOD
Administrative Law Judge

Washington, D.C.